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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **South Bay Pizza Inc.**, a California
21 Corporation

22 Defendants.

23
24 **Case No.**

25 **Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

26 Plaintiff Scott Johnson complains of South Bay Pizza Inc., a California
27 Corporation; and alleges as follows:

28
29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
32 level C-5 quadriplegic. He cannot walk and also has significant manual
33 dexterity impairments. He uses a wheelchair for mobility and has a specially
34 equipped van.

35 2. Defendant South Bay Pizza Inc. owned Stuft Pizza located at or about
36 1426 Dempsey Rd, Milpitas, California, in April 2021.

37 3. Defendant South Bay Pizza Inc. owns Stuft Pizza (“Restaurant”) located

1 at or about 1426 Dempsey Rd, Milpitas, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein is
7 responsible in some capacity for the events herein alleged, or is a necessary
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
9 the true names, capacities, connections, and responsibilities of the Defendants
10 are ascertained.

11

12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23

24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to the Restaurant in April 2021 (two times) with the
26 intention to avail himself of its goods or services motivated in part to
27 determine if the defendants comply with the disability access laws. Not only
28 did Plaintiff personally encounter the unlawful barriers in April 2021, but he

1 wanted to return and patronize the business several times but was specifically
2 deterred due to his actual personal knowledge of the barriers gleaned from his
3 encounter with them.

4 9. The Restaurant is a facility open to the public, a place of public
5 accommodation, and a business establishment.

6 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible paths of travel in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. The Restaurant provides paths of travel to its customers but fails to
10 provide wheelchair accessible paths of travel.

11 12. One problem that plaintiff encountered was that there was no safe path
12 of travel leading to the outside dining tables. Wheelchair users must travel
13 behind cars and in the driveway to gain access to the outside dining tables.
14 Ambulatory customers, meanwhile, can use the sidewalk and step over the
15 curb, which is not accessible for wheelchair users.

16 13. Plaintiff believes that there are other features of the paths of travel that
17 likely fail to comply with the ADA Standards and seeks to have fully compliant
18 paths of travel for wheelchair users.

19 14. On information and belief, the defendants currently fail to provide
20 wheelchair accessible paths of travel.

21 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
22 personally encountered these barriers.

23 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
24 wheelchair accessible facilities. By failing to provide accessible facilities, the
25 defendants denied the plaintiff full and equal access.

26 17. The failure to provide accessible facilities created difficulty and
27 discomfort for the Plaintiff.

28 18. The defendants have failed to maintain in working and useable

1 conditions those features required to provide ready access to persons with
2 disabilities.

3 19. The barriers identified above are easily removed without much
4 difficulty or expense. They are the types of barriers identified by the
5 Department of Justice as presumably readily achievable to remove and, in fact,
6 these barriers are readily achievable to remove. Moreover, there are numerous
7 alternative accommodations that could be made to provide a greater level of
8 access if complete removal were not achievable.

9 20. Plaintiff will return to the Restaurant to avail himself of its goods or
10 services and to determine compliance with the disability access laws once it is
11 represented to him that the Restaurant and its facilities are accessible. Plaintiff
12 is currently deterred from doing so because of his knowledge of the existing
13 barriers and his uncertainty about the existence of yet other barriers on the
14 site. If the barriers are not removed, the plaintiff will face unlawful and
15 discriminatory barriers again.

16 21. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to his disability. Plaintiff will
19 amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once he conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to his disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, he can sue to have all barriers that relate to his
24 disability removed regardless of whether he personally encountered them).

25

26 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
27 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
28 Defendants.) (42 U.S.C. section 12101, et seq.)

1 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
2 again herein, the allegations contained in all prior paragraphs of this
3 complaint.

4 23. Under the ADA, it is an act of discrimination to fail to ensure that the
5 privileges, advantages, accommodations, facilities, goods and services of any
6 place of public accommodation is offered on a full and equal basis by anyone
7 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
8 § 12182(a). Discrimination is defined, inter alia, as follows:

- 9 a. A failure to make reasonable modifications in policies, practices,
10 or procedures, when such modifications are necessary to afford
11 goods, services, facilities, privileges, advantages, or
12 accommodations to individuals with disabilities, unless the
13 accommodation would work a fundamental alteration of those
14 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 15 b. A failure to remove architectural barriers where such removal is
16 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
17 defined by reference to the ADA Standards.
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs or to ensure that, to the
22 maximum extent feasible, the path of travel to the altered area and
23 the bathrooms, telephones, and drinking fountains serving the
24 altered area, are readily accessible to and usable by individuals
25 with disabilities. 42 U.S.C. § 12183(a)(2).

26 24. When a business provides facilities such as paths of travel, it must
27 provide accessible paths of travel.

28 25. Here, accessible paths of travel have not been provided in conformance

1 with the ADA Standards.

2 26. The Safe Harbor provisions of the 2010 Standards are not applicable
3 here because the conditions challenged in this lawsuit do not comply with the
4 1991 Standards.

5 27. A public accommodation must maintain in operable working condition
6 those features of its facilities and equipment that are required to be readily
7 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

8 28. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10

11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
12 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
13 Code § 51-53.)

14 29. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
17 that persons with disabilities are entitled to full and equal accommodations,
18 advantages, facilities, privileges, or services in all business establishment of
19 every kind whatsoever within the jurisdiction of the State of California. Cal.
20 Civ. Code §51(b).

21 30. The Unruh Act provides that a violation of the ADA is a violation of the
22 Unruh Act. Cal. Civ. Code, § 51(f).

23 31. Defendants’ acts and omissions, as herein alleged, have violated the
24 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
25 rights to full and equal use of the accommodations, advantages, facilities,
26 privileges, or services offered.

27 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
2 (c).)

3 33. Although the plaintiff encountered frustration and difficulty by facing
4 discriminatory barriers, even manifesting itself with minor and fleeting
5 physical symptoms, the plaintiff does not value this very modest physical
6 personal injury greater than the amount of the statutory damages.

7

8 **PRAYER:**

9 Wherefore, Plaintiff prays that this Court award damages and provide
10 relief as follows:

11 1. For injunctive relief, compelling Defendants to comply with the
12 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
13 plaintiff is not invoking section 55 of the California Civil Code and is not
14 seeking injunctive relief under the Disabled Persons Act at all.

15 2. For equitable nominal damages for violation of the ADA. See
16 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
17 and any other equitable relief the Court sees fit to grant.

18 3. Damages under the Unruh Civil Rights Act, which provides for actual
19 damages and a statutory minimum of \$4,000 for each offense.

20 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
21 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

22

23 Dated: May 18, 2021

CENTER FOR DISABILITY ACCESS

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25 By: _____

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Amanda Seabock, Esq.
Attorney for plaintiff